IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1373 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAIKH ANVARHUSSAIN UMARBHAI - Petitioner(s)
Versus
COMMISSIONER OF FISHERIES & 2 - Respondent(s)

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Appearance :
MR DR BHATT for Petitioner(s) : 1,
MR. A.J.Desai, Ld.AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 10/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule. Mr.Ashish J. Desai, learned Assistant Government Pleader waives service of rule on behalf of respondent no.1

2. In response to the public notice inviting tenders for a fishing contract in respect of Mazum Lake (for which upset price was fixed at Rs.1,01,620/-)the petitioner's tender offering Rs.15 lacs per year was found to be the highest and was accepted. However, as per the terms and conditions of the tender if the contract is awarded after 31st December, the Contractor is entitled to get rebate of 30%. Since the Deputy Commissioner of Fisheries awarded the contract to the petitioner by letter dated 20th January, 2006, there is no dispute

about the fact for the first year the petitioner is entitled to get the rebate of 30% and, therefore, for the first year the Ijara amount works out to Rs.10,50,000/-. There is also no dispute about the fact that the petitioner is required to give security deposit of Rs.3 lacs out of which Rs.1.50 lacs was already paid as the earnest money deposit.

3. The only controversy between the parties is whether the petitioner is entitled to pay the amount of Rs.10,50,000 for the first year in three installments or whether the respondent authority has power to call upon the petitioner to pay the entire amount of Rs.10,50,000/- as down payment at a time. According to the petitioner, the said letter dated 20th January, 2006 was received by the petitioner on or about 24th January, 2006 and the petitioner was prepared to immediately pay the balance security deposit of Rs.1.50 lacs and the first installment of Rs.3,50,000/- (being 1/3 of Rs.10,50,000/-). However, according to the respondent authority the committee had decided to call upon the petitioner to pay the entire amount

of Rs.10,50,000/- in one stroke and, therefore, the present petition.

4. Having perused the terms and conditions of the tender, we are satisfied that there is considerable substance in the grievance being made by Mr.Bhatt for the petitioner. For the purpose of the contract each Ijara commences from 1st July and expires on 10th June. There is no dispute about the fact if the contract is awarded between 1st July and 31st December, the Contractor is required to pay the amount in three equal installments, first payable within seven days from the date of the receipt of the contract, second within one month from the date of the order and the third installment to be paid within two months from the date of the order. But, if the contract is awarded in the later half of the year, that is after 31st December, the first installment is required to be paid as soon as the committee informs the party about the acceptance of the tender or within such time as may be given by the committee and the second and third installments are to be paid within the aforesaid time limits

i.e. within one month from the date of the order and within two months from the date of the order.

5. In view of the above, the committee or the respondent authority was not justified in calling upon the petitioner to pay the entire amount of Rs.10,50,000/- for the first year within seven days from date of receipt of the order dated 20th January, 2006. As per the above terms and conditions, the petitioner was required to pay the first installment of Rs.3.50 lacs plus the balance amount of security deposit = Rs.1.50 lacs (over and above the EMD of Rs.1.50 lacs already paid earlier) i.e. total amount of Rs.5 lacs within one week from the date of the receipt of the order. However, it appears that petitioner vide letter dated 24th January, 2006 offered to pay Rs.6,50,000/- , and, therefore, while issuing notice on 28th January, 2006, we had directed the petitioner to pay Rs.6.50 lacs and directed the respondent to accept the amount without prejudice to the rights and contentions of the parties. There is no dispute about the fact and Mr.A.J.Desai,

Ld.AGP actually agrees that the petitioner has deposited Rs.6.50 lacs with the respondent authority by 2nd February, 2006.

6. Having regard to the amounts already paid by the petitioner including the earnest money deposit of Rs.1.50 lacs and the aforesaid amount of Rs.6.50 lacs, it is clear that the petitioner is now required to pay the following further amounts so as to comply with the requirements, as far as Ijara fee for the first year and 20% security deposit is concerned.

(i) Rs.2 lacs by 28th February, 2006

(ii) Rs.3,50,000/- by 31st March, 2006.

7. These payments will make the aggregate amount of Rs.10.50 as Ijara amount and Rs.3 lacs as security deposit. For the second year commencing from 1st July, the petitioner will be liable to pay Rs.15 lacs in three equal installments as per the terms and conditions of the tender.

8. Mr.Desai, learned AGP submits that in view of

the above direction, the respondent authority will issue the work order within one week from today.

9. The petition is accordingly allowed in terms of the aforesaid directions and statement. Rule is accordingly made absolute with no order as to costs.

(M.S.SHAH, J.)

(K.A.PUJ, J.)

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